**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.**

A.O. No.331/2003

The New India Assurance Company Ltd.
Through its Divisional Manager,
Opposite Judgee Court, Nainital Road
Haldwani.

……Opposite Party/Respondent

Versus

1. Shri Binod Kumar Joshi ……Claimant/Respondent
2. Shri Tara Singh Rautela
3. Shri Jitender Singh Negi

……Respondents

**Coram: Hon'ble P.C.Verma, J.,**
**Hon'ble B.S. Verma, J.**
Date: September 28, 2004

This appeal has been preferred against the judgment and award dated 11.09.2003, passed by the Motor Accident Claims Tribunal/ District Judge, Almora, ***(hereinafter referred to as the Tribunal)*** in Motor Accident Claim Petition N.32 of 2002, Binod Kumar Joshi Versus The New India Assurance Company Ltd. and others whereby the Tribunal has awarded a sum of Rs.3,56,000/- with simple interest w.e.f. 25.09.2002 till the date of payment at the rate of 9% per annum and cost of RS.1,000/- in favour of the claimant. Aggrieved, the Insurance Company-O.P.No.1 has come up in appeal with a prayer to set aside the impugned judgment and award mainly on the ground that the Tribunal has awarded Rs.,,56,000/- (Rupees three lac fifty six thousand only) in Para No.16 in the impugned judgment while deciding the Issue No.3 and there is no permanent disability in this case. The claimant being a Lecturer in Birla Institute of Technology is doing his work permanently and there is no deficiency on his duties part as a Lecturer. The claim awarded in the head of medical expenses, pain and agony and towards salary is exorbitant.

Brief facts of the case according to the claimant on the date of accident, he was traveling in Maruti Van No.UP.81/P-9942. But, on 16.02.2002, when the aforesaid vehicle reached near the place of accident at 10.15 A.M., it turns turtle resulting into the simple and grievous injuries to the claimant. The report of the said accident was lodged by the claimant and he was taken to the Primary Health Centre, Kherana. After first aid, he was referred to Haldwani and then from Haldwani to Bareilly where he was admitted in J.K. Srivastava's Hospital and remained there. His treatment was continued for 1-1/2 (one and half month) as indoor patient. During the treatment, he was x-rayed several times and fracture was noticed in his hand. During the operative period, a rod was inserted in his hand a hand was also placed under plaster, which was removed after 4 to 5 months. But inspite of treatment and medical expenditure of Rs.3.00 lacs, h e is still not fit as before and during treatment, he suffered mental and physical agony. He is working as lecturer in Biral Institute of Technology, Noida on the monthly salary of Rs.8,000/- per month but due to the said accident, he could not attend his duties for-347-days and remained on medical leave. Therefore, he claimed in all, Rs.5.00 lacs as compensation.

The learned tribunal on the basis of evidence filed by the claimant awarded Rs.3,56,000/- as compensation. The tribunal framed the necessary issues, which were decided by the Tribunal on the basis of evidence adduced by the parties. Issue No.1 related to rash and negligent driving of the vehicle in question. Issue No.2 related to valid driving licence. Issue No.3 is related to amount of compensation.

On the findings of Issue No.1, the Tribunal found that the vehicle in question was being driven rashly and negligently at the time of accident. On Issue No.2, the tribunal held that the driver was having valid driving licence at the time of accident and accordingly the claim petition was allowed.

We have learned counsel for the appellant, Mr. R.B. Agarwal as well as learned counsel for the claimants-respondents Nos. 1, 2 and 3, Mr. M.C. Pandey and have carefully gone through the material on record including the impugned judgment and award.

It has been argued before us on behalf of the appellant that in the present case, there was collusion been the claimants and the O.P. No.2, the owner of the vehicle. Therefore, the appellant is entitled to defend the case on all the ground other than grounds available U/S-149(2) of Motor Vehicle Act and has also submitted that the quantum of compensation as awarded by the Tribunal is highly excessive.

So far as these two submission of the appellant, it is most significant to mention here that the grounds of challenge are available to the insurer-appellant as enumerated in sub-Section (2) of Section 149 of the Act and no other is available to the Insurance Company. No. permission under Section 170 of the Act has been sought before and granted by the Tribunal to the appellant to contest the case on the grounds available to the insured or the person against whom claim is made. Section 170 of the Motor Vehicles Act deals with impleadment of insurer in certain cases. On a careful perusal of the said provisions of law, we are not inclined to accept the contentions raised on behalf of the insurer-appellant, because under the Act, the insurer has no right to

challenge the judgment and award passed by the learned Tribunal except on the grounds as enumerated under sub-Section (2) of Section 149 of the Motor Vehicles Act, 1988. The law provides that appeal by the insurer can be filed on limited grounds and the grounds of challenge cannot be enlarged. We are fortified in our view by the Apex Court judgment in the Case of ***"National Insurance Company Ltd. Chandigarh Vs. Nicolletta Rohtagi and others" [(2002 ) 7, Supreme Court Cases, 4546]*** IN that case, it has been observed by the Apex Court that ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle".*** Thus, in view of the law laid down by the Apex Court reported in (2002) 7, S.C.C. 456 (Supra), which is fully applicable in the present appeal, none of the contentions raised on behalf of the appellant is tenable and has to be ignored outright.

While parting with the order, it may be observed that the learned Tribunal on Issue No.3 has awarded an amount of Rs.2.00 lacs towards Medical Expenses including Traveling expenses etc. incurred by the claimant, an amount of Rs. 96,000/- towards loss of salary for one year @Rs. 8,000/- p.m. in addition to an amount of Rs.60,000/- towards mental agony, physical pain etc., thereby, the Tribunal has held in Para-16 of its judgment that the claimant is not entitled to get any other amount under any head and ultimately awarded simple interest @9% p.a. on the total awarded amount of Rs.3,56,000/-. In addition to this, the Tribunal has awarded an amount of Rs.1,000/- as cost in favour of the

claimant. Thus, it is clear that the Tribunal has held that the claimant is entitled to the aforesaid amount of Rs.3,56,000/- and not Rs.3,96,000/-. But it appears that due to clerical error, this amount of Rs.**3,56,000/-** has been typed to be Rs.**3,96,000/-** in operative portion of Judgmetn without any finding. It is clearly a typing mistake and no other view can be taken on this score. Therefore, the appeal is liable to be dismissed on merit, the clerical error apparent on the face of record is being corrected in this appeal. The operative portion of impunged judgment is hereby corrected and the amount of award shall be read as Rs.3,56,000/- (Rupees three lac fifty six thousand only) instead of Rs.3,96,000/-.

Ultimately, we are of the view that the present appeal is devoid of merit and must fail.

The appeal is dismissed on merit. However, the clerical mistake as mentioned above is corrected. The amount of impugned award shall be read as Rs.3,56,000/- instead of Rs.3,96,000/-. No order as to costs.

The amount in deposit with this Court be remitted to the Motor Accident Claims Tribunal concerned for being paid to the claimants.

**(B .S.Verma, J.)** **(P.C. Verma, J.)**